

Dr. Subodh Kumar Vs. the State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jul-05-1994

Reported in : 1994(2)WLN366

Judge : N.K. Jain, J.

Appeal No. : S.B.C. Writ Petition No. 4582 of 1992

Appellant : Dr. Subodh Kumar

Respondent : The State of Rajasthan and ors.

Advocate for Pet/Ap. : Mr. Singhvi

Disposition : Petition dismissed

Judgement :

N.K. Jain, J.

1. Since this writ petition and the writ petitions mentioned in Schedule 'A' appended to this order involve a common question of fact and law, as agreed by the parties, they are being disposed of by this common order.

2. For convenient disposal, the facts of S.B.C.W. Petition No. 4582/92 are being taken into consideration. The petitioner Dr. Subodh Kumar Saxena has passed his M.B.B.S. Examination in the year 1973 and was appointed as Senior

Demonstrator in Pathology in the year 1975. It is alleged that he passed his post graduation in pathology and Micro-Biology in the year 1980 and he was promoted to the post of Lecturer in Pathology. It is also alleged that in the year 1982 he applied for No objection Certificate to the Government for issuance of Pass-Port, which was granted. It is also alleged that he moved an application for grant of deputation for taking up foreign assignment of Guyana petitioner has alleged that vide order dt. 10.3.83 he was ordered to be relived and in pursuance of which he was relived on 11.3.83. It is further alleged that vide order dated 25.5.85 he was treated on deputation for taking up foreign assignment for one year though as per the petitioner the said order was not served upon him. The petitioner has also alleged that he had requested the Indian High Commission at Guyana to allow him to complete three years duration and in pursuance of which Indian High Commissioner wrote a letter on 8.10.84 to the Government of Rajasthan and in the absence of any communication he continued at Guyana. The petitioner also sent a letter to the Government of Rajasthan seeking permission to change the country in March, 1986 and extension of period of deputation by two years. Ultimately, the petitioner returned Indian in April, 1988 and he joined his duties and posted at R.N.T. Medical College, Udaipur. Thereafter a charge-sheet dt. 1.7.88 (Annex. 1) was served upon the petitioner proposing to hold an enquiry Under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958, on 10.8.89 after one year. Reply to the charge-sheet was filed on 21.8.89 (Annex.2) The respondents were not satisfied with the reply of the petitioner and appointed an Enquiry Officer to hold the enquiry against the petitioner. The petitioner submitted the documents in his defence vide application dt. 24.2.90(Annex.3). The Enquiry Officer after completing enquiry submitted his report dated 25.9.91 (Annex.4), copy of which was supplied to the petitioner along with the notice dated 30.1.92(Annex.5) directing the petitioner to make his submissions in regard to the enquiry officer's report. The petitioner replied the same vide Annex.6 dated 19.2.92 and also submitted supplementary reply on 5.6.92(Annex.7) The respondents vide order dated 25.8.92(Annex.8) imposed penalty of removal from service on the petitioner. Being aggrieved with the same the petitioner has approached this Court Under Article 226 of the Constitution praying that the impugned order dated 25.8.92(Annex.8) may be quashed with all consequential

benefits and action of government in refusing extension of leave and change of country be declared illegal and he be given permission as is being given to other persons.

3. This writ petition has been filed on 28.8.92 and while admitting it was ordered that meanwhile, the operation of the order dated 25.8.92(Annex.8) passed by the Dy. Secretary (Personnel A-3) Department, Government of Rajasthan, Jaipur removing the petitioner from the service is hereby stayed.

4. In pursuance of the notice, the respondents submitted reply stating that 'order for joining the foreign assignment was passed after receiving the joining report from the petitioner' and Annex.R/2 dt.25.5.85 was passed to grant deputation to the petitioner from 12.3.83 to 11.3.84 only and after that period he continued there without any specific permission from the State Government, copy of which was endorsed to the petitioner. It is stated that the petitioner did apply for extension of deputation and failed to join his duties after the completion of deputation period and accepted the other foreign assignment at St. Lucia without permission of the State Government in violation of the terms and conditions set in the deputation order itself and he did not chose to intimate the State Government which amounts to a wilful absence from duty. It is also stated that the non-petitioners vide letter dated 23.4.87 asked the petitioner for reporting himself on duty within ten days from the receipt of the letter and was also informed from initiated disciplinary action for wilful absence but he did not take care of the letter dt. 23.4.87(Annex.R.3) even upto April, 1988 for a considerable period for one year and came to India in April, 1988. As such, he was allowed to join the duties and the disciplinary proceedings were initiated against him and thereafter the order imposing penalty was passed which was served by registered post on the petitioner on 5.9.92 alongwith a copy of the Rajasthan Public Service Commission. The respondents have also submitted that the Inquiry Officer has given a finding that a charge of wilful absence having been proved against Dr. Saxena at least for the period from March, 1986 to April, 1988 and consequently after enquiry Under Rule 16 of the Rajasthan Civil Service (C.C. & A.) Rules he was removed from service which is not illegal.

5. The petitioner in counter filed rejoinder on 28.8.92 stating that review is not an alternative remedy in CCA. Rules and point can be agitated Under Article 226 of the Constitution. It has been stated that after passing of the Impugned order in the petitioner's case dismissal of other three Doctors was converted into stoppage of three grade increments with cumulative effect. The petitioner has stated that it is wrong to contend that the petitioner did not apply for extension of his tenure. It is stated that the petitioner had requested the State Government in the year 1986 itself to permit him to undertake an assignment at St. Lucia and despite that the respondents did not take any action on the request of the petitioner. It is also stated that till 5.9.92 copy of impugned order alongwith the advice of the R.P.S.C. was not served therefore it could not have been submitted alongwith the writ petition as the same has been received by the petitioner. It is further stated that the penalty imposed on petitioner is disproportionate to the gravity of misconduct.

6. The case has come up on an application Under Article 226(3) of the Constitution for vacating the ad-interim order dt.28.8.92. As agreed by the counsel for the parties, the matter is heard finally alongwith the similar matters. I have heard learned Counsel for the parties & perused the material on record.

7. Mr. Singhvi, learned Counsel for the petitioner has firstly contended that the impugned order has been passed on the basis of advice of R.P.S.C. but the copy was not given initially to the petitioner and relied on Dr. Ganpatlal v. State (S.B.C.W. Petition No. 4269/90) decided on 22.10.91 and its special Appeal No. 373/92 filed by the State was dismissed as time barred in limine on 6.3.92. He has prayed that the entire proceedings are liable to be set aside.

8. On the other hand Mr. Sharma has submitted that it is not necessary to supply a copy of advice to the delinquent officer and relied on the Chief Engineer (Highways & Rural Works), Madras-5 and Anr. v. A. Chengalvarayan (1982(2) SLR- 662), Major U.R. Bhatt v. Union of India : AIR 1962 SC1344 , Ram Gopal Chaturvide v. State of M.P. : (1970)ILLJ367SC and State of U.P. v. Manbodhan Lal : (1958)ILLJ273SC .

9. In The Chief Engineer (Highways and Rural Works), Madras-5 v. A. Chengalvarayan (supra) a Division of Madras High Court held that it is not

necessary to supply copy of advice of Public Service Commission to the delinquent officer when the advice of Public Service Commission was taken into consideration while inflicting punishment of dismissal. In *Major U.R.Bhatt v. Union of India* (Supra) their lordships of the Supreme Court has held that Article 320(3)(c) of the Constitution of India (Which is substantially the same as Section 266 of the Government of India Act, 1935) is not mandatory and it does not confer any rights on the public servant, and the absence of consultation with the Public Service Commission or any irregularity in consultation does not afford him a cause of action in a Court of law. Article 311 of the Constitution is not controlled by Article 320.

10. In *State of U.P. v. Manbodhan Lal* (supra) their lordships of the Court has held that Article 320(3)(c) of the Constitution does not confer any rights on a public servant so that the absence of consultation or any irregularity in consultation, should not afford him a cause of action in a court of law, or entitle him to relief under the special powers of a High Court Under Article 226 of the Constitution or of the Supreme Court Under Article 32.

11. In *Ram Gopal Chaturvedi v. State of Madhya Pradesh* (supra) it has been held that provisions of Article 320(3)(c) are not mandatory and do not confer any right on public servant to challenge termination of service on the ground of absence of consultation with State Public Service Commission.

12. In view of above, it is settled that provisions of Article 320 are not mandatory and does not control Article 311 and they do not confer any right on public servant, so that the absence of consultation should not afford him a cause of action in a court of law or entitle him to relief under the special powers of a High Court Under Article 226. Mr. Singhvi has not been able to show otherwise or any prejudice, caused to petitioner. Therefore, the argument that due to non-supply of copy of advice of R.P.S.C. before passing the impugned punishment order, the proceedings are vitiated has no substance.

13. So far as the decision of *Ganpatlal v. State* (supra) is concerned, the same is not helpful as in that case the incumbent got himself registered for foreign assignment with the Government of India and interviewed for the purpose and on

receiving initial contract order for two years but as per practice he applied accordingly to the Government for 30 days P.L. which was sanctioned on 19.11.85 and the incumbent left for foreign assignment. A communication dated 24.12.86 directing the petitioner for duty immediately and to show cause as to why disciplinary proceedings should not be initiated for wilful absence from 16.11.1985, was received by the petitioner at Riyad on 15.4.87 through his uncle and in pursuance of which he resigned from his foreign assignment on 16.4.87 and returned to India to join duty. But after holding enquiry on the charge of remaining wilful absent from government duty from 18.12.85, the petitioner was removed from service vide order dt. 20.9.90. A writ petition was preferred by the incumbent challenging the impugned punishment order on the ground that enquiry report was not made available to him before passing Annex. 16 dated 20.9.90 so also on the count that opinion of Public Service Commission was not made available to the delinquent. The learned Single Judge of this Court quashed the same on the ground of non-supply of copy of enquiry report in view of Union of India v. Mohd. Ramzan Khan : (1991)ILLJ29SC . The learned Single Judge also observed that there is no direct authority laying down that the opinion of the Public Service Commission should be made available. However, it was ordered that the same may also be supplied to the delinquent officer so that he make proper submissions with regard to such opinion. In my humble opinion the said decision is of no assistance as admittedly in that case the point of non-supply of advice of R.P.S.C. and case law was not delat. Further the ratio of the decision of Union of India v. Mohd. Ramzan Khan (supra) decided on 20.11.90 could not be made applicable since their lordhsips have held that the decision will be operative prospectively and not retrospectively, whereas in that case the impugned order of removal was passed on 20.9.90 (Annex. 16) prior to the said decision. Moreso, the ratio evolved in Mohd. Ramzan's case (supra) is now further interpreted by their lordships of the Supreme Court in Managing Director, ECIL, Hyderabad v. B. Karunakar : (1994)ILLJ162SC holding that the delinquent has to show what prejudice has been caused to him due to non-supply of enquiry report. Be that as it may be, since this point is not in issue in that case. As stated above, the said decision is of no help to this petitioner.

14. Learned Counsel for the petitioner has next contended that, the additional reply wherein submission regarding discrimination was submitted by the petitioner was not considered. It is no doubt true that reply if any submitted by the delinquent should be considered but in the instant case the petitioner submitted his supplementary reply on 5.6.92 whereas the decision was taken on 9.4.92 after considering the earlier reply and matter was referred for advice to the R.P.S.C. therefore, it cannot be said that the petitioner was not given opportunity to defend his case and the alleged supplementary reply amounts to after thought and since the reply was submitted after taking decision it had no relevancy on the point of discrimination. Thus, the respondents have not erred in not considering the same.

15. Mr. Singhvi has assailed the impugned order of dismissal of the petitioner from service on the ground that the action of imposing harsh penalty upon the petitioner is discriminatory since a number of doctors proceeded on foreign assignment either without taking leave or have overstayed the leave granted to them but they have been let off by the State Government with penalty lesser than that of removal or dismissal from service and relied on Dr. Dilip Kumar v. State (S.B.C.W. Petition No. 3557/89) decided on 8.12.1993 and Dr. Mal Chand Poonia v. State (S.B. Civil Writ Petition No. 1829/1989) decided on 31.10.1990.

16. On the other hand Mr. Sharma has opposed the submission of Mr. Singhvi contending that the petitioner was not given any discriminatory treatment and persons against whom inquiries were initiated were penalised as per the rules on the basis of proved facts of the case, accordingly Article 14 is not attracted on such decisions, and therefore, no interference is called for.

17. In Dr. Dilip Kumar v. State (S.B.C.W. Petition No. 3557/89) decided on 8.12.1993, the petitioner sought permission to treat him on deputation in the kingdom of Saudi Arabia in March 1983. The petitioner was informed vide communication dt. 9.1.1985 that period of his deputation was effective from 2.3.83 to 1.3.85 and thereafter in case of extension, the petitioner could stay beyond the period of deputation after taking permission only. The petitioner submitted an application in February, 1985 with a certificate from his employer that his period of contract is for three years expiring on 16.4.86, therefore, his period of deputation

be also treated for three years but he did not receive any reply. The petitioner again moved an application for extension but no reply was received by him. An enquiry Under Rule 16 was proposed to be taken against him for remaining wilfully absent from duty w.e.f. 2.5.85. However, the charges levelled against the petitioner were not found proved by the Enquiry Officer but the Disciplinary Authority disagreed with the findings of the Enquiry Officer and imposed punishment of removal from service by order Annex. 12 dt. 19.9.89. The learned Single Judge has found violation of principles of natural justice established since the petitioner was not afforded an opportunity to make his submissions on disagreement with the findings of Enquiry Officer and held that the breach of principles of natural Justice on first count alone is sufficient to vitiate the order.

18. A contention was also raised before the learned Single Judge that ordinarily persons who are allowed to take foreign assignment on deputation, are supposed to continue on such deputation for a maximum period of five years generally but the petitioner was not given this general benefit and no reason for denying the said benefit was shown. The learned Single Judge after considering a decision of this Court rendered in *Dr. G.K. Lohra v. University of Jodhpur* (WLR 1992(S)-586) wherein the petitioner who was working as Medical Officer in the University was allowed to take foreign assignment by the University and was granted extra-ordinary leave without pay for two years. The foreign assignments through the Home Ministry, Government of India was conveyed with certain conditions including to obtain no. objection certificate for two years for taking up job in Iran from the employer, and after obtaining no objection, again he applied for extension of six months extra-ordinary leave and thereafter he also applied for extension of leave as his contract was renewed for two years more. The petitioner received a telegraphic message from University to join duty in the first week of August and declined his leave failing which and his services were terminated on 28.5.92 which was challenged by way of writ petition and the same was allowed on the ground that the services of the petitioner was terminated without holding any enquiry and without affording him an opportunity of hearing. The Court also considered the general guidelines issued by Government of India in connection with foreign assignment has held that the action of the University is discriminatory as no reason has been given for excluding the incumbent from the benefit of extending 5

years period for extra- ordinary leave for taking foreign assignment on deputation. On the basis of said decision of G.K. Lohra's case the learned Single Judge has held that 'redfusl of extension to the petitioner for continuing in foreign assignment beyond the initial period was, being discriminatory, could not have been sustained, and if the basic graveman of charge of continuing on deputation without permission is held to be lacking in legal sanctity on the touchstone of a fair and just treatment by State to its employees.' One more contention that the order of punishment awarded to the petitioner is not only disproportionate to misconduct proved but is patently discriminatory inasmuch as in the like circumstances and for the like charges the persons have been awarded with penalty of much lesser magnitude and referred to the cases of Dr. S.K. Pathak, Dr.(Smt.) Anupurna Mathur, (Mrs.) Basuti Gupta, Dr. Mahaveer Pathak, Dr. Dalpat Singh Choudhary, R.C. Thanvi and Dr. S.P. Sudrnia, who were awarded lesser punishment than removal for wilful absence and overstay, so also to a decision rendered in Dr. Dalpat Singh v. State (S.B.C.W. Petition No. 4524/89) decided on 8.12.93. Reliance was also placed on Dr. Malchand Poonia v. State (S.B.C.W. Petition No. 1829/89) decided on 8.10.90. The learned Single Judge after considering said cases as also a Supreme Court decision rendered in Sengaa Singh and Ors. v. State of Punjab and Ors. (AIR 1984 SC-1499) held that it is apparent that 'once the petitioners are able to establish, that there has been different treatment in the matter of awarding punishment for similar misconduct to persons of the same class, situated similarly; to sustain it and that in any case, if the charge of misconduct alleged, even if proved, the punishment that could be imposed ought not have exceeded stoppage of three grade increments as in the cases referred above. It has been further observed that it was a fit case in the facts and circumstances of which the power to review Under Rule 33 and/or 34 of the C.C.A. Rules ought to have been exercised suo moto alongwith Dalpat Singh's case in order to remove the discrimination in punishment and quashed the impugned order Annex. 12 dt. 19.9.89'.

19. In Dr. Mal Chand Poonia v. State (S.B.C.W. Petition No. 1829/89) decided on 31.10.1990, the petitioner remained absent from 10.1.1981 to 31st December, 1986 and filed an affidavit that because of prolonged illness of his parents, and thereafter the death of the parents he could not join and that during the period of

absence the petitioner had neither gone abroad. An enquiry Under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 was proposed against him. The petitioner was exonerated by the Enquiry officer. The Disciplinary Authority while referring to Rule 58, R.S.R. held that the finding of the Enquiry officer cannot be accepted merely because no orders refusing the leave had been passed on the petitioner's applications and that the leave cannot be claimed as a matter of right. A contention was also raised that a differential treatment has been given to the petitioner and the order is peruse discriminatory because in similar cases, punishment of stoppage of annual grade increment has only been imposed in identical cases as per Schedule-A which was produced showing the names of other doctors who remained absent for the period much more than this period for which the petitioner had remained absent. The learned Single Judge while observing that some doctors have admitted their going abroad whereas the petitioner has categorically stated that he never went abroad and no material has come on record to disbelieve the same and quashed the impugned order dated 3.5.1989 (Annex.A. 11), however, directed to consider the question of quantum of punishment by considering the cases of identical nature.

20. It is no doubt true that Article 14 obligates equality in all dealings by the State is supplemented by Article 16 which applies principles of equality to the field of public employment and the equality of opportunity in the matter relating to employment extends over the whole period of employment i.e. the point of time of entry into the service to that when the stage of cessation of employment is reached. The disciplinary proceedings are quasi-judicial in character and that the authorities should arrive at its conclusion on the basis of some evidence and further while punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules. While dealing with the cases of co- delinquents or in the cases where the facts and circumstances are absolutely same, they should be awarded same punishment as far as possible but no hard and fast rule can be evolved for awarding punishment and it depends upon the proved facts & circumstances of each case. Keeping it in view the legislature in its wisdom has rightly left it on the discretion of the quasi judicial/judicial courts to award punishment which can be minor or major as per the

conscience and the circumstances of that case and one cannot claim parity in discretion so exercised in the matter of punishment as of right. In this view of the matter, in my opinion, Article 14 is not attracted since awarding of punishment is conscience discretion of the Court depending upon the facts and circumstances of each case. A reference may be made to decision of this Court rendered in *ESKAYEF Limited v. Collector of Central Excise* : 1990(49)ELT649(SC) , *Smt. Triveniben v. State of Gujarat* : 1988(38)ELT714(SC) and *Brij Kishore Pandey v. State of Uttar Pradesh* reported in : (1971)3SCC931 - Even otherwise if the argument of Mr. Singhvi, counsel for the petitioner is accepted then in every case of proved wilful absence, the authorities will have no option but to award punishment of stoppage of 2-3 grade increments only even in the cases of different delinquents facing different enquiries for the charge of wilful absence having their different sets of facts as well as explanation and in any case penalty of dismissal as provided in rules is awarded, the same will be ultimately set aside on the ground of discrimination by the Court Under Article 226 which will not only create indiscipline amongst the members of medical profession but the provision of dismissal of service provided in the Rules will become futile and redundant. That apart it may create disparity amongst the other employees who remains absent while staying in India but they are awarded extreme penalty of removal from service. Therefore, in my humble opinion, this argument has no substance and the petitioner's claim as of right to award same punishment as has been awarded in the referred cases cannot be accepted. The cases referred by Mr. Singhvi of other doctors in Chart Annex. 1 are not applicable to the fact of present case in absence of any details being furnished including the enquiry reports by the petitioner.

21. So far as the aforesaid decision of Dr. Dilip Kumar's case is concerned, the same is not of any help to the petitioner as in that case the impugned punishment order stood vitiated on the ground that it has been passed in breach of natural justice as the petitioner was not afforded opportunity of being heard by the Disciplinary Authority before passing the impugned punishment order particularly when in that case the Enquiry officer exonerated the incumbent from the charge, were as in the present case the petitioner has not been able to make out a case that the principles of natural justice were not followed and the remaining points

decided in said Dilip Kumar's case will be discussed in the later part of the judgment. Likewise, the decision of Dr. Mai Chand Poonia v. State is also not of any advantage to the petitioner as in that case, the case of incumbent was that he never went abroad and no material was placed on record to disbelieve the same and further in that case the Enquiry Officer exonerated the incumbent whereas in the case in hand as stated above the petitioner went to take foreign assignment without proper selection under F.A.S. and remained there even after expiry of leave period without prior permission. Moreso, the petitioner has not been able to show by furnishing material that his case is absolutely same with that of others who have been awarded lesser punishment.

22. Mr. Singhvi has argued that as no order/communication limiting his foreign assignment for a particular period was received by the petitioner, therefore, he has reasonably presumed that his period of deputation is five years as has been granted by the Government in the cases of other Doctors particularly when he made a request to the Indian High Commissioner at Guyana to allow him to complete three years duration and in pursuance thereof the High Commissioner wrote a letter dt. 8.10.84 to the Government of Rajasthan. In support of this contention he has relied on Dr. G.K. Lohra v. University of Jodhpur (1992(S) Raj.-586) and Dr. Dilip Kumar v. State (supra). In this connection suffice it to say that for leaving head quarters for personal reason or on deputation and before proceeding on leave one has to seek prior permission, so also before taking foreign assignment after registration under F.A.S. Ministry of Home Affairs, Government of India the incumbent has to apply before competent authority and after selection on obtaining no objection certificate he can go abroad for the particular period sanctioned by the Government and for over stay also subsequent extension of leave/permission is necessary from competent authority. In such a situation if the plea of the petitioner is accepted that since In certain cases period of deputation has been extended upto five years he is also entitled for the same treatment even without sanction/extension of leave then there will be no use of applying and sanction for particular period as in every case as soon as an employee gets permission, it will be deemed that the sanction has been granted for maximum period i.e. for five years, and granting permission for a particular period for foreign assignment as provided Under Rules will be of no use. To my

mind neither it is the intention of the Rules which provides a procedure for taking foreign assignment nor it can be interpreted in such a fashion and the argument of discrimination on this count has no legs to stand. In view of this, the incumbents who overstays against the rules without previous extension cannot be encouraged and such type of practice cannot be countenanced by this Court Under Article 226 of the Constitution and the argument advanced by Mr. Singhvi on the basis of decisions of this Court has no substance. In *G.K. Lohra v. University of Jodhpur* (supra), the Incumbent was an employee of University and he was selected under the F.A.S. and was granted leave for two years and thereafter he moved for further extension of leave since the contract was renewed for two years more, therefore, this Court keeping in view that his deputation was in public interest held the action of University discriminatory as no reason was given for not extending the leave. The present case is not of such a nature as stated the petitioner has not placed on record that he was registered and selected. Since in this case the petitioner was not selected under F.A.S. after registration nor he left for taking foreign assignment with prior permission though later on permission was granted but that was only for one year upto 11.3.84 and further as the petitioner has not been able to show that his deputation was in public interest. Similarly in *Dr. Dilip Kumar's* case (supra) since the impugned order was already set aside on the ground of violation of principles of natural justice the observations made on remaining points have no bearing, particularly when in that case petitioner sought permission for extension from the concerning authority which was not denied but in this case there is a serious dispute that the petitioner had ever applied for extension of deputation period which had already expired and the petitioner has only referred to a letter of Indian High Commissioner at Guyana, which is not relevant for the purpose, as admittedly permission can only be granted by the concerned competent authority.

23. There is no discrimination on the basis of cases mentioned in paras 28, 29 and 30 of the writ petition in view of denial of the averment by the State in reply stating that extension was granted and permission for change of country was also given to them, therefore, they cannot be equated and no relief can be granted on the alleged ground of discrimination. The petitioner has not placed any material on record including the enquiry report of the cases mentioned in the list annexed with

the writ petition as anx. 7, so they are not helpful in the absence of full particulars including the enquiry report for considering regarding converting award of punishment of dismissal into minor penalty and some of the cases mentioned in the chart are common and their names are disclosed in the decision of Mai Chand Poonia's case (supra) that they were awarded less punishment will not be of any help under the facts & circumstances of this case. So far as discrimination with some of the Doctors on the basis of review is concerned, according to the petitioner their dismissal has been converted into stoppage of 2-3 grade Increments but since the remedy of review is a separate remedy and His Excellency the Governor Under Rule 33 & 34 of C.C.&A.; Rules has all the powers to review the order passed by the Government, that cannot be made applicable Under Article 226 of the Constitution and the petitioner cannot take any help out of the said decisions. That apart petitioner has not availed the remedy of review provided under the rules according to law.

24. It has been further contended that the Disciplinary Authority has not given personal hearing to the petitioner before dis-agreeing with the conclusion of the Enquiry Officer. The conditions of service of the employees of the State Government are governed by the R.S.R. Rules, 1969 provides for leave on foreign deputation but the employee cannot claim as of right that leave so applied, as well as ordinary leave should be granted. Further without proper sanction leave cannot be availed. To my mind, it is not the intention of the rules that the working incumbent Doctors are permitted to join duty as and when they like and any order allowing them to join duty does not debar the Department to proceed with the departmental enquiry as he remained willfully absent without permission and after period of sanction or in violation of rules. As already stated in the Instant case the petitioner has not been able to show after registering himself for foreign assignment under foreign Assignment Scheme of Government of India he was interviewed and selected. Be that as it may be. A perusal of the enquiry report reveals that he went abroad for foreign assignment on 12.3.83 and was granted permission for one year upto 11.3.84 on 25.5.85. There is nothing on record that he asked the State Government for extension and rather he left for St. Lucia in March, 1986 without making any intimation. He continued to remain absent from duty in India without any extension or permission of the competent authority. The

Enquiry Officer has rightly observed that the charge of wilful absence is fully proved against the petitioner at least for the period from March, 1986 to 27th April, 1988 and despite repeated intimations to him earlier for his repatriation through Indian High Commissioner at Guyana, the petitioner did not return.

25. In reply (Annex. 6) to the notice given to him with enquiry report the petitioner has not disputed the findings of the Enquiry Officer and admitted his guilt stating that the same may be condoned and even in supplementary reply (Annex. 7), which as stated above was not necessary to be considered, the petitioner has stated that 'even if my guilt is taken to be established the same may be condoned in view of Mai Chand Poonia's case. Under the circumstances there was no occasion for the Disciplinary Authority to record any reason since the findings of the Enquiry Officer were not challenged by the petitioner and, therefore, it was not necessary for the Disciplinary Authority to provide him an opportunity of hearing before passing the impugned order of punishment.

26. Under Article 226 this Court has wide powers but certainly in writ jurisdiction this Court cannot act as a Court of Appeal and this Court has only to see whether in the disciplinary proceedings principles of natural justice have been followed and fair treatment has been given or not and unless the order is perverse, the same cannot be interfered with Under Article 226 even if it may be wrong. In this case Mr. Singhvi, counsel for the petitioner has not alleged that the enquiry was perverse or unfair and when the disciplinary enquiry has been conducted fairly without bias or predilection in accordance with the relevant disciplinary rules and the constitutional provisions, the order passed by such authority cannot be interfered Under Article 226 of the Constitution as discussed above merely on the ground that in the matter of punishment, the petitioner has been treated differently. That apart the petitioner has not challenged the impugned order on the ground that it has been passed intentionally or mala fide. Therefore, the petitioner is not entitled for any relief. The ad-interim order dated 28.8.1992 is discharged.

27. So far as the writ petition no. 300/93 filed by Dr. Asgar Ali is concerned, in that petition on receipt of notice dt. 23.7.87 to take action against him Under Rule 86 of R.S.R. as he remained absent from 20.2.81, the petitioner came to India who

earlier left for Nigeria without getting his application processed for foreign assignment applied for leave for 15 days on 4.2.81 and thereafter his leave was not extended despite he sought extension through his wife by telegram on 9.1.91 a charge-sheet was served upon the petitioner Under Rule 16 of C.C.A. Rules, 1958. An enquiry was held against the petitioner after giving him opportunity. The Disciplinary Authority after considering his reply dt. 11.5.92 and additional reply dt.8.6.92 and as per his admission the charge was proved and the petitioner was removed from service vide Annex. 10 dt.30.7.92. The petitioner preferred said writ petition, mentioned in the Schedule-A annexed with the writ petition and relied on Dr. Dal pat Singh Choudhary's case. I have gone through the material on record and there is no substance in view of above discussion and the case of Dalpat Singh Choudhary relieved on by the petitioner is not helpful as in that case the penalty of removal was reduced to stoppage of three grade increments by His Excellency the Governor, therefore, no relief can be granted to the petitioner. The ad-interim order dt. 18.1.92 is discharged.

28. In Dr. Smt. Usha Maheshwari (S.B. Civil Writ Petition No. 1055/91) the petitioner has come out with a case that due to illness of her daughter she accompanied her husband who is also a Doctor and went to Libiya and she returned from Libiya on 4.5.86 and resumed duty on 8.5.86. A charge-sheet dt.22.5.87 alongwith medmorandum was served proposing enquiry Under Rule 16 was served on the petitioner. Four witnesses and 20 documents were produced. The Disciplinary Authority after considering the enquiry report and the other material as well as the explanation on record inflicted penalty of removal from service vide order dt. 13.2.91. I have perused the material on record carefully. Petitioner has not been able to show any prejudice caused to her. Admittedly in the letter dt. 3.6.86 the petitioner has admitted that she left her duty without permission and went with her husband to Libya. The petitioner remained wilful absent from 16.2.81 to 7.5.86 without there being any leave in her credit which was already communicated to her long back. Under these circumstances, no relief can be granted to her on the basis of discrimination. In view of what I have discussed above, there is no force In this writ petition and as already stated the case of Dalpat Singh is also of no help to the petitioner. The ad-interim order dt. 13.3.91 is also discharged.

29. In Dr. Mool Singh Chouhan (S.B. Civil Writ Petition No. 2118/93) the petitioner was appointed as C.A.S. vide order dt.3.9.79 and last date for joining was 15.1.80. He could not join duty as he was working at Tehran. On his request he was allowed to join vide order dated 28.3.80 by 1.5.80. He was posted at Pali on 20.5.80. He took leave for 15 days from 2.6.80 without resuming duty and again moved for extension from 2.6.80 to 20.9.80. He was directed to join duty within 30 days of the notice on 25.4.87 which was also published in the paper on 9.5.87. He joined the duty on 2.6.87. The petitioner was served a charge-sheet dated 18.4.88 Under Rule 16 of the Raj. Civil Services (Classification, Control and Appeal) Rules, 1958. The petitioner submitted his reply. The Government was not satisfied with the reply and appointed Enquiry Officer who submitted his report. The Disciplinary Authority after considering the enquiry report and reply to the notice dated 30.5.88 and material on record found that the petitioner remained wilful absent and imposed punishment of removal from service vide Annex. 18 dated 30.8.89 by a detailed order. The petitioner in rejoinder has stated that he was discriminated with some other doctors. I have perused the writ petition, reply and rejoinder and material on record. In reply to the enquiry report the petitioner submitted that he was initially appointed as Demonstrator in the year 1973. He was selected for Iran and his resignation was accepted on 10.1.75. He was re-appointed on 14.2.76 on ad-hoc basis. After having relieved from Iran, he joined the duty on 2.8.76 but for want of no objection certificate he resigned which was accepted on 17.9.76 and thereafter he was again selected vide order dt. 3.9.79. Be that as it may be. The disciplinary Authority has rightly come to the conclusion that the petitioner remained wilful absent without any permission, so the discretion exercised cannot be said to be arbitrary. The facts placed in rejoinder that he was granted leave from. 21.8.92 to 20.8.94 for two years for studying Post Graduate Course will not help the petitioner as the Government is competent to proceed with the disciplinary action against the incumbent who remained wilfully absent from duty without permission or after expiry of sanctioned period & violated any of the rules even though he was allowed to join duty and subsequently leave has been granted, therefore, merely on this count that earlier he is granted leave for studying his P.G. Course will not be of any significance and the impugned order cannot be set aside and punishment awarded can't be converted on the basis of

discrimination. Under the facts and circumstances of the case, I found no reason to interfere with the discretion, so exercised on the basis of decisions of the cases as per Schedule annexed to writ petition Dalpat Singh Choudhary's case bearing S.B.C.W. Pet.No. 4524/89 which was dismissed as infructuous on 8.12.93 as in that case relief was granted by His Excellency the Governor and case cited in rejoinder viz. K.C.Somani's case, are not helpful and no relief can be granted to the petitioner. The ad-interim order dt. 4.9.93 is discharged.

30. In Dr. K.L. Maheshwari (S.B.C.W. Pet. No. 5665/92) the petitioner was served with a memorandum dt. 4.6.87 purporting to hold an enquiry Under Rule 16 of the Rajasthan (C.C. & A.) Rules, 1958 and the petitioner submitted his reply denying allegations levelled against him. The Enquiry Officer after considering the documents and the explanation of the petitioner that the petitioner has admitted the guilt that he went Libiya without permission to get treated his daughter and remained absent from 15.3.81 to 11.5.86. The petitioner moved application initially on 14.1.81 to 15.2.81 on the ground of urgent domestic work but did not resume duty and again moved for extension of leave from time to time, from Jodhpur address whereas the petitioner admitted in the applications dt. 12.5.86 (Anx. R/1) and dt. 3.6.86 (Anx. R/5) that he went abroad and served Libiya without prior permission due to unavoidable circumstances. I have perused the material on record and I do not find any error in the order dt. 30.9.92 and the discretion has been rightly exercised by the respondents on the existing facts of the case, therefore, no interference is called for. The cases referred by the petitioner are not of any help to him, as already stated.

31. No order point has been pressed before me.

32. As discussed above, writ petitioner of Dr. Subodh Kumar and other writ petitions mentioned in the Schedule-A have no force, so they are hereby dismissed with no order as to costs.

33. Before parting with the case, I am constraint to observe that when there are guidelines for taking up F.A.S. (Home Ministry) Government of India and there are provisions in the rules providing procedure, which are framed with a view to deprecate taking up foreign assignment on individual efforts directly and change of

country subsequently without permission, why compliance of these rules are not being made strictly within time which is causing inconvenience to members of service as also to the concerned authorities.

34. It is expected of the respondents to see and to complete all formalities including granting of leave mentioning specific period of deputation before relieving the incumbents who are eligible and fulfill the requirement of the rules and guidelines namely registered under F.A.S. sponsored by the Central Government and no objection certificate has been issued to proceed for deputation to foreign country. Thereafter on receiving application for extension, grant extension timely if think proper before expiry of earlier leave period so as to avoid harassment, complications and unnecessary litigation. A copy of this order be sent to the Chief Secretary to the Government of Rajasthan for necessary action.

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